

EXHIBIT 5



Zachary Dolling <zachary@texascivilrightsproject.org>

Re: Ogg Discovery Response Extension re: 5:21-cv-00844-XR

1 message

Zachary Dolling <zachary@texascivilrightsproject.org>

Thu, Aug 11, 2022 at 3:32 PM

To: Eric Nichols <Eric.Nichols@butlersnow.com>

Cc: Victoria Giese <Victoria.Giese@butlersnow.com>, Sarah Chen <schen@texascivilrightsproject.org>, Hani Mirza <hani@texascivilrightsproject.org>, Thomas Buser-Clancy <tbuser-clancy@aclutx.org>, Savannah Kumar <skumar@aclutx.org>, Ashley Harris <aharris@aclutx.org>, Karson Thompson <Karson.Thompson@butlersnow.com>, asegura@aclutx.org, "Adriel I. Cepeda Derieux" <acepedaderieux@aclu.org>, asavitzky@aclu.org, Sophia Lakin <slakin@aclu.org>, Samantha Osaki <sosaki@aclu.org>, Susan Mizner <smizner@aclu.org>, ldavis@drtx.org, Iromano@drtx.org, Jerry Vattamala <jvattamala@aaldef.org>, slorenzo-giguere <slorenzo-giguere@aaldef.org>, Patrick Stegemoeller <pstegemoeller@aaldef.org>, "Amunson, Jessica Ring" <jamunson@jenner.com>, "Mittal, Urja R." <umittal@jenner.com>, "Cai, Sophia L." <scai@jenner.com>, Sarah Beverly <Sarah.Beverly@butlersnow.com>, Ari Savitzky <asavitzky@aclu.org>

Thank you for the information Eric. The OCA plaintiffs oppose the motion to stay.

Sincerely,

Zach Dolling
Texas Civil Rights Project
Mobile: 512-496-4746

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On Wed, Aug 10, 2022, 4:43 PM Eric Nichols <Eric.Nichols@butlersnow.com> wrote:

Zach, as you have seen the HCDAO is taking an appeal from the Court's denial in part of the motion to dismiss.

We will be filing this week a motion to stay proceedings with respect to the HCDAO pending that appeal, which would include discovery from the HCDAO. We will send out a meet and confer email tomorrow to counsel for all parties on that. In the meantime let us know your clients' position on that motion to stay or if you would like to discuss it further. Thanks.

Eric

Eric J.R. Nichols

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From: Zachary Dolling <zachary@texascivilrightsproject.org>

Sent: Tuesday, August 9, 2022 9:49 AM

To: Victoria Giese <Victoria.Giese@butlersnow.com>

Cc: Sarah Chen <schen@texascivilrightsproject.org>; hani@texascivilrightsproject.org; tbuser-clancy@aclutx.org; skumar@aclutx.org; aharris@aclutx.org; Karson Thompson <Karson.Thompson@butlersnow.com>; asegura@aclutx.org; acepedaderieux@aclu.org; Eric Nichols <Eric.Nichols@butlersnow.com>; asavitzky@aclu.org; slakin@aclu.org; sosaki@aclu.org; smizner@aclu.org; ldavis@drtx.org; Iromano@drtx.org; jvattamala@aaldef.org; slorenzo-giguere@aaldef.org; pstegemoeller@aaldef.org; jamunson@jenner.com; umittal@jenner.com; scai@jenner.com; Sarah Beverly <Sarah.Beverly@butlersnow.com>; Ari Savitzky <asavitzky@aclu.org>

Subject: Re: Ogg Discovery Response Extension re: 5:21-cv-00844-XR

Counsel, We are open to negotiating an agreed timeline for production of the discovery requested on April 12, 2022, or to meet and confer regarding your remaining objections to its production. However, if we do not hear back from you regarding either of those options by the end of the day tomorrow, August 10, 2022, we will see no option but to move to compel production. Thank you,

Zach Dolling
Texas Civil Rights Project
Mobile: 512-496-4746

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On Wed, Aug 3, 2022 at 1:15 PM Zachary Dolling <zachary@texascivilrightsproject.org> wrote:

Victoria,

My apologies--I just noticed I requested a response by the end of the day "Friday, August 3." To avoid any confusion I want to clarify that I did mean Friday, August 5.

Thank you,

Zach Dolling

Texas Civil Rights Project
Mobile: 512-496-4746

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On Wed, Aug 3, 2022 at 11:35 AM Zachary Dolling <zachary@texascivilrightsproject.org> wrote:

Good morning Victoria,

Yesterday the District Court denied District Attorney Ogg's motion to dismiss all claims brought by Private Plaintiffs with respect to SB 1 Sections 4.06, 4.09, 6.04, 6.05, 6.06, 7.02, and 7.04. In the process the Court rejected District Attorney Ogg's claim to sovereign immunity. I believe this disposes of your previous objection to producing written discovery on the basis of sovereign immunity.

It has now been several months since we propounded our written discovery requests but without any production. Please let us know by the end of the day Friday, August 3, if you intend to produce the requested materials.

Thank you,

Zach Dolling

Texas Civil Rights Project
Mobile: 512-496-4746

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On Fri, Jun 17, 2022 at 1:23 PM Zachary Dolling <zachary@texascivilrightsproject.org> wrote:

Hi Victoria,

During the hearing held on November 16, 2021, the Court clearly contemplated that discovery would proceed in this case. Moreover, the State Defendants have raised similar sovereign immunity issues as your client and have nevertheless engaged in the discovery process. It is true that the Fifth Circuit has in some instances limited discovery pending determination of a sovereign immunity defense. But even then, discovery that goes to the applicability of the sovereign immunity defense is permissible. In this case, Plaintiffs' discovery requests all pertain to the Harris County District Attorney's past and current investigations into and prosecution of criminal election law violations. These facts are relevant to the Harris County District Attorney's connection to enforcement of the SB 1 provisions at issue in this lawsuit and are relevant to determining the applicability of your sovereign immunity defense. We therefore do not believe sovereign immunity shields your client from producing the information we have requested.

As you suggested, we would be happy to discuss this further via phone or video call if you would like.

Thank you,

Zach Dolling

Texas Civil Rights Project
Mobile: 512-496-4746

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On Fri, Jun 10, 2022 at 10:35 AM Victoria Giese <Victoria.Giese@butlersnow.com> wrote:

Hi Sarah,

As I am sure you will recall, we discussed a short extension on our responses to your discovery requests, which your clients refused to give. District Attorney Ogg served her objections to your clients' discovery requests on May 12, 2022. District Attorney Ogg stands on her objections. Among these objections, as you know, are ones made on grounds of sovereign immunity. Our client has a pending motion to dismiss all claims against her on grounds of sovereign immunity, and we respectfully contend that these same sovereign immunity protections would apply with respect to these discovery requests regardless of whether District Attorney Ogg is a party to this litigation. As you are also aware these sovereign immunity issues have been litigated extensively at the Fifth Circuit and in other courts, and aspects of sovereign immunity protection against discovery are currently before the Fifth Circuit in a pending appeal in the *Russell v. Harris County* litigation.

Thanks and let us know if would like to discuss our position further.

Victoria

Victoria A. Giese

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From: Sarah Chen <schen@texascivilrightsproject.org>

Sent: Wednesday, June 8, 2022 1:51 PM

To: Victoria Giese <Victoria.Giese@butlersnow.com>; Karson Thompson <Karson.Thompson@butlersnow.com>; Eric Nichols <Eric.Nichols@butlersnow.com>

Cc: hani@texascivilrightsproject.org; zachary@texascivilrightsproject.org; tbuser-clancy@aclutx.org; skumar@aclutx.org; aharris@aclutx.org; asegura@aclutx.org; acepedaderieux@aclu.org; asavizky@aclu.org; slakin@aclu.org; sosaki@aclu.org; smizner@aclu.org; ldavis@drtx.org; lromano@drtx.org; jvattamala@aaldef.org; slorenzo-giguere@aaldef.org; pstegemoeller@aaldef.org; jamunson@jenner.com; umittal@jenner.com; scail@jenner.com

Subject: Re: Ogg Discovery Response Extension re: 5:21-cv-00844-XR

Hi Victoria,

The OCA-GH Plaintiffs wanted to check in about the status of document production in response to our First Set of Requests for Production. Without waiving any objections or responses to your objections, we request the production of any responsive documents by the June 10th deadline you suggested. Please let me know if you'd like to discuss further.

Best,

Sarah

Sarah Xiyi Chen

Pronouns: she/her

Attorney, Voting Rights Program

Texas Civil Rights Project

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On Thu, May 12, 2022 at 4:35 PM Sarah Chen <schen@texascivilrightsproject.org> wrote:

Hi Victoria,

The OCA-GH Plaintiffs oppose your request for more time and will not agree to extending the discovery deadline to June 10.

Thank you,

Sarah

Sarah Xiyi Chen

Pronouns: she/her

Attorney, Voting Rights Program

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On Thu, May 12, 2022 at 11:18 AM Victoria Filoso <Victoria.Filoso@butlersnow.com> wrote:

Counsel:

We are in receipt of your discovery requests to Defendant Kim Ogg in her official capacity. Unfortunately we are unable to serve our responses today. We are currently in trial through next week on another matter and will need additional time to put our responses together. We will be able to get you our responses by Friday, June 10th. We are happy to reciprocate any discovery extensions you may need in the future.

Please call me if you have any questions or concerns.

Thank you,

Victoria Filoso

Victoria A. Filoso

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